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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

IN RE: FUTURE MOTION, INC.

PRODUCTS LIABILITY LITIGATION

No.: 23-md-03087-BLF

**JOINT INITIAL CASE MANAGEMENT
 STATEMENT**

This document relates to:

ALL ACTIONS

The Parties submit this Initial Case Management Statement, and would respectfully show the
 Court as follows:

1. Appointment and Organization of Plaintiffs' Leadership

a. Individual Personal Injury/Wrongful Death Actions

Plaintiffs believe it advisable for appointment of lead counsel. Specifically, individual
 personal injury/wrongful death action Plaintiffs ("PIWD Plaintiffs") undersigned or listed on this

CMC statement propose **Robert W. Cowan of Bailey Cowan Heckaman PLLC** and **Rene F. Rocha of Morgan & Morgan** to serve as PIWD Plaintiffs' Co-Lead Counsel for the individual personal injury/death actions. A copy of each applicant's *curricula vitae* and/or declaration is attached hereto as Exhibits A and B for the Court's review.

In addition to the appointment of Co-Lead Counsel, PIWD Plaintiffs submit that Plaintiffs' leadership should also include a steering committee, a law and briefing committee, a discovery committee, and a settlement committee. Members of those committees would be selected and proposed on motion before the Court's second Case Management Conference.

Future Motion also believes it is advisable for the appointment of, at least, Lead Counsel for Plaintiffs so that Future Motion can work as efficiently as possible with the Plaintiffs' group. Future Motion proposes that the appointment of Lead Counsel for Plaintiffs occur before further substantive events occur.

b. Separate Class Action Case

Plaintiff's Proposal:

Counsel for the putative class in the class action case entitled *Loh v. Future Motion, Inc.*, Case No. 5:21-cv-06088 (N.D. California) (the "Loh Action") respectfully request the Court to appoint M. Anderson Berry at the law firm Clayco C. Arnold, A Professional Corporation, and Jerrod C. Patterson at Hagens Berman Sobol Shapiro LLP as co-lead counsel on behalf of the putative class. The firm and individual resumes for both counsel are attached hereto as Exhibits C and D.

Defendant's Proposal:

Future Motion does not object to the above request that Anderson Berry and Jerrod Patterson be appointed as co-lead counsel on behalf of the putative class. However, its lack of objection is not a concession that counsel meet the adequacy requirements of Federal Rule of Civil Procedure 23(a) and Future Motion expressly reserves its right to challenge counsel's adequacy pursuant to that rule.

1 **2. Proposed Representative Cases**

2 **a. PIWD Plaintiffs' Proposal:**

3 PIWD Plaintiffs submit *Bunnell, et al.*, 1:22-cv-01220 ("*Bunnell*") and *Oatridge, et al.*, 5:21-
4 cv-09906 ("*Oatridge*") as two of four representative cases. Generally, and as discussed more in depth
5 in Section 7, *infra*, all constituent actions are predicated upon allegations that PIWD Plaintiffs
6 sustained personal injuries while riding various models of Defendant's Onewheel device. More
7 specifically, PIWD Plaintiffs allege that while riding their respective Onewheel devices the board
8 suddenly and unexpectedly stopped, shut down, or otherwise shut off causing the board to cease self-
9 balancing and "nosedive" forward, resulting in the rider being ejected from the device.

10 In *Bunnell*, Carl Joseph Bunnell was riding his Onewheel XR with his son in Colorado when
11 he experienced a nosedive. Mr. Bunnell was ejected from the Onewheel and violently slammed into
12 the concrete sidewalk he was riding on. As a result, Mr. Bunnell suffered severe brain damage, which
13 ultimately caused his untimely death. In *Oatridge*, Darryl Martin John Oatridge was riding his
14 Onewheel+ XR in Kansas when he, too, experienced a nosedive. Mr. Oatridge's impact with the
15 concrete path he was riding on caused cervical neck fractures resulting in quadriplegia.

16 The foregoing cases are representative of the most serious injuries, including a fatal injury, in
17 the MDL. Plaintiffs would additionally propose that one or two additional cases be selected (by
18 Plaintiffs) representing less serious injuries. Plaintiffs would select those two additional cases before
19 the Court's next case management conference.

20 **b. Defendant's Proposal:**

21 While there is variance in the procedural posture of the cases, the majority of cases are at the
22 beginning of fact discovery or have had no discovery occur. In addition, Future Motion was advised
23 that a significant number of new cases would be filed in federal court – perhaps as many or more than
24 are currently in the MDL. Future Motion also expects additional cases to be removed from state court.

1 Thus, given that most cases were only recently initiated or have yet to be initiated and Future Motion
2 has only limited information regarding the majority of the cases that will be involved in this
3 proceeding, Future Motion believes that it is premature to select representative cases. Instead, Future
4 Motion proposes that a brief period be allowed for cases to be added followed by a period for a
5 Plaintiff's Fact Sheet (PFS) to be responded to prior to the selection of representative cases.
6

7 With regard to the selection of representative cases, after PFSs are verified, Future Motion
8 suggests that Plaintiff's Lead Counsel and Defendant each select four cases involving significant
9 injuries and four involving less significant injuries. Each side would then be permitted to strike two
10 cases from each category and merits-based discovery would then proceed on the remaining cases.
11

12 If instead, Future Motion must identify cases with limited information and more than 30+
13 outstanding cases to be transferred/filed, then it preliminarily identifies the following five as
14 representative cases, with the intention of selecting eight total after all cases are added:

- 15 1. Schuyler Elliott v. Future Motion, Inc. (Onewheel+ XR, alleges he broke his left wrist);
- 16 2. Kwynn Koop v. Future Motion, Inc. (Onewheel+ XR, alleges he broke his clavicle, had
17 fractured ribs, a punctured lung, some contusions, and a head injury);
- 18 3. Stephen Russo v. Future Motion, Inc., et al. (Onewheel+ XR, alleges he suffered a
19 traumatic brain injury, fluctuating attention, impaired memory, word retrieval impairment,
20 decreased patience, and confusion caused by head trauma, anxiety, insomnia, PTSD, and
21 frustration);
- 22 4. Shane Smith v. Future Motion, Inc. (Onewheel+ XR, alleges he sustained a comminuted
23 fracture of the left clavicle, left elbow abrasions, and a displaced fracture of the right big
24 toe);
25
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1 5. Bryan Reedy v. Future Motion, Inc., et al (Onewheel Pint, alleges he sustained a loss of
2 consciousness, and a herniated nucleus pulposus in the cervical spine resulting in central
3 cord syndrome and a cervical fusion).

4 The identification of representative cases is based on information presently available to Future
5 Motion. As indicated above, Future Motion understands there are a significant number of cases that
6 will be included in this proceeding in the near future. Future Motion does not have information on the
7 nature of these cases, which makes their selection or exclusion as representative cases premature.

8 By identifying preliminary representative cases, Future Motion does not intend any waiver of
9 *Lexecon*.

10 3. **Proposed Presentation of Early Motions**

11 a. **PIWD Plaintiffs' Proposal:**

12 PIWD Plaintiffs do not anticipate the filing of any early motions and will defer to the *Loh* Class
13 Counsel and Defendants on how to proceed with the presentation of Motions related to *Loh*.

14 b. ***Loh* Class Counsel Proposal:**

15 The parties in the *Loh* Action have previously filed briefing on Future Motion's motion to
16 dismiss, and motion to strike the class action allegations. The *Loh* parties respectfully request leave to
17 re-file this briefing on a date specified by the Court. Considering that the *Loh* action is already a
18 consolidated action, consolidating two separately filed Class Actions, *Loh et al. v. Future Motion, Inc.*
19 No. 5:21-cv-06088 (N.D. Cal.) and *Wang et al. v. Future Motion, Inc.*, No. 5:22-cv-05064 (N.D. Cal.),
20 if the Court elects to consolidate the present consolidated class action with the recently filed, and not
21 yet served, *Nemeth* action, Plaintiffs in the *Loh* Action believe that any future filed related Class
22 Actions, including *Nemeth*, should be subsumed under the operative Consolidated Class Action
23 Complaint.
24
25
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1 **c. Defendant's Proposal:**

2 Prior to coordination, Future Motion had filed and fully briefed motions to dismiss the
3 operative class action complaint and to strike the class allegations. Given coordination, Future Motion
4 agrees with the *Loh* plaintiffs and their counsel that the motions and briefs should be re-filed and given
5 a new hearing date that best aligns with proceedings in the personal injury matters.
6

7 Nevertheless, Future Motion also respectfully requests that this Court consider whether the
8 *Loh* and *Nemeth* actions should be consolidated into a single putative class case given the overlap of
9 allegations, time periods, and putative classes. Should this Court decide that the two matters should
10 be consolidated, then Future Motion respectfully submits that the *Loh* plaintiffs and *Nemeth* plaintiffs
11 should submit a new consolidated class action complaint and Future Motion be afforded the
12 opportunity to challenge it anew, if prudent and consistent with the procedures set forth in the Federal
13 Rules of Civil Procedure. If this Court opts not to require that *Loh* and *Nemeth* be consolidated, then
14 Future Motion intends to file a motion to dismiss and a motion to strike once it is properly served by
15 the *Nemeth* plaintiffs.
16

17 **4. Proposed Discovery Schedule**

18 **a. Plaintiffs' Proposal:**

19 To avoid the potential loss of relevant evidence and permit the Parties to proceed expeditiously,
20 PIWD Plaintiffs and Class Counsel Plaintiffs propose first focusing discovery efforts on common fact
21 discovery of Defendant with an eye toward completion by the end of June 2024. Common fact
22 discovery of Defendant should consist of, at a minimum:
23

- 24 • Defendant's service upon Plaintiffs of rules-compliant and comprehensive Rule 26(a)
25 disclosures with particular focus on production of documents showing applicable
26 insurance coverages, including primary, excess and umbrella policies, for all policy
27 periods implicated by the constituent actions, as well as the disclosure of Defendant's
28 self-insured retention limits, if any, for each implicated policy period;
- written discovery propounded on Defendant focused on issues common to all MDL cases;

- depositions of Defendant and Defendant's corporate witnesses; and
- source code inspections for each model Onewheel device.

After the commencement of common fact discovery, the Parties should proceed with representative-case Plaintiff-specific discovery, followed by expert disclosures and discovery, with an eye towards completion by mid-November 2024.

A detailed proposed schedule follows:

Event	Date
Serve Parties' Initial Disclosures	30 days from first CMC
Parties' Final Proposals of Representative Cases	February 1, 2024
Court's Final Selection of Representative Cases	February 29, 2024
Commencement of Fact Discovery of Representative Plaintiffs	May 1, 2024
Close of Common Fact Discovery of Defendant	July 1, 2024
Close of Representative Plaintiff Fact Discovery	July 31, 2024
Plaintiffs' Expert Designations	September 16, 2024
Class counsel's motion for class certification	September 16, 2024
Defendants' Expert Designations	October 18, 2024
Defendants' opposition to motion for class certification	October 18, 2024
Representative PI Cases Sequenced for Trial	October 18, 2024
Close of Expert Discovery	November 18, 2024
Reply in support of motion for class certification	November 18, 2024
<i>Daubert</i> /Dispositive Motions for first three Representative PIWD Trials ¹	December 16, 2024
Responses to <i>Daubert</i> /Dispositive Motions for PIWD cases	January 13, 2025
Replies to <i>Daubert</i> /Dispositive Motions for PIWD cases	January 27, 2025

¹ Class counsel recommends deferring dispositive rulings and trial pending the completion of the first bellwether PI trial.

Event	Date
Hearing on <i>Daubert</i> /Dispositive Motions for PIWD cases	February 11, 2025
Motions <i>in Limine</i> Filed for PIWD cases	March 11, 2025
Motion <i>in Limine</i> Responses Filed	April 1, 2025
Motion <i>in Limine</i> Replies Filed	April 15, 2025
Final Pretrial Conference (First Representative Trial)	May 15, 2025
First Representative Trial	June 16, 2025
Final Pretrial Conference (Second Representative Trial)	July 16, 2025
Second Representative Trial	August 18, 2025
Final Pretrial Conference (Third Representative Trial)	September 17, 2025
Third Representative Trial	October 20, 2025
Serve Parties' Initial Disclosures	30 days from first CMC
Parties' Final Proposals of Representative Cases	February 1, 2024
Court's Final Selection of Representative Cases	February 29, 2024
Commencement of Fact Discovery of Representative Plaintiffs	May 1, 2024
Close of Common Fact Discovery of Defendant	July 1, 2024
Close of Representative Plaintiff Fact Discovery	July 31, 2024
Plaintiffs' Expert Designations	September 16, 2024
Defendants' Expert Designations	October 18, 2024
Representative Cases Sequenced for Trial	October 18, 2024
Close of Expert Discovery	November 18, 2024
<i>Daubert</i> /Dispositive Motions for first three Representative Trials	December 16, 2024
Responses to <i>Daubert</i> /Dispositive Motions	January 13, 2025
Replies to <i>Daubert</i> /Dispositive Motions	January 27, 2025
Hearing on <i>Daubert</i> /Dispositive Motions	February 11, 2025
Motions <i>in Limine</i> Filed	March 11, 2025
Motion <i>in Limine</i> Responses Filed	April 1, 2025
Motion <i>in Limine</i> Replies Filed	April 15, 2025
Final Pretrial Conference (First Representative Trial)	May 15, 2025

First Representative Trial	June 16, 2025
Final Pretrial Conference (Second Representative Trial)	July 16, 2025
Second Representative Trial	August 18, 2025
Final Pretrial Conference (Third Representative Trial)	September 17, 2025
Third Representative Trial	October 20, 2025

At or near the conclusion of the first three representative trials, the Parties should meet and confer and present the Court with a proposal for either remand of the balance of the untried cases, or additional, future representative trials.

b. Defendant's Proposal:

Future Motion believes that a period to add cases should be provided for, with a corresponding period to Answer the new cases or bring motions to dismiss, as necessary. Future Motion also notes that although Plaintiffs have not proposed a Master Complaint, after all 70+ cases are filed in this proceeding, a Master Complaint may ultimately be advisable. After the pleadings are settled, and Lead counsel has been selected, discovery can be commenced.

Future Motion objects to Plaintiffs' unequal proposal to proceed with discovery solely against the Defendant first. The Plaintiffs asserted their claims against and the Plaintiffs have the burden of proof. It is axiomatic that, absent an understanding of the facts at issue in the Plaintiffs' claims, the parties cannot properly identify the scope of relevant discovery against Future Motion and Future Motion cannot fully prepare its defense. Without discovery of all Plaintiffs through the completion of a Plaintiff Fact Sheet, Future Motion is severely restricted in its ability to even identify representative Plaintiffs cases. The purpose of this coordinated proceeding is to allow for a streamlined procedure for discovery, not to preclude Future Motion from its ability to equally conduct discovery of the parties asserting claims against Future Motion.

Future Motion proposes the following schedule through the close of discovery:

DEADLINE	EVENT
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1	January 22, 2024	Applications for the Appointment of Lead
2		Counsel for Plaintiffs.
3	January 29, 2024	Objections to Applications for the
4		Appointment of Lead Counsel for Plaintiffs.
5	February 5, 2024	Ruling on Applications for the Appointment of
6		Lead Counsel for Plaintiffs.
7	February 5, 2024	Period to Allow for Filing and/or Service of
8		Additional Complaints
9	February 12, 2024	Draft Plaintiff's Fact Sheet provided by
10		Defendant to Lead Counsel for Plaintiffs
11	March 13, 2024	Answer(s) to any Additional Complaint(s) or
12		Rule 12 motion(s) to dismiss/strike
13		Complaint(s)
14	March 13, 2024	Final Plaintiff's Fact Sheet Distributed to all
15		Plaintiff's counsel
16	March 27, 2024	Briefs in Opposition(s) to Rule 12 motion(s) to
17		dismiss/strike Complaint(s)
18	April 3, 2024	Reply Briefs in Support of Rule 12 motion(s)
19		to dismiss/strike Complaint(s)
20	April 15, 2024	Completed Plaintiff's Fact Sheets Served
21	To be scheduled by the Court	Hearing on Rule 12 motion(s) to dismiss/strike
22		Complaint(s)
23	To be determined the Court	Ruling on Rule 12 motion(s) to dismiss/strike
24		Complaint(s)
25	May 15, 2024	Representative Cases to be proposed with four
26		cases each in the significant and not-significant
27		injury categories
28		

June 3, 2024	Each Party to Strike two cases in each category from the other side's proposed Representative Cases
30 days after Representative Cases are Identified	Rule 26(a)(1) Initial Disclosures due and opening of fact discovery
30 days after Initial Disclosures	Form Discovery from All Plaintiffs and Form Discovery to All Plaintiffs
60 days after service of Form Discovery	Responses to Form Discovery
90 day time period after responses to Form Discovery	Record Collection / Subpoenas
To be scheduled in the 90 day time period after responses to Form Discovery	Board Inspections, Gear Inspections, Mobile Application Inspections
120 days after record collections/inspections	Depositions
At the end of the deposition schedule	Close of Fact Discovery
60 days after the close of fact discovery	Plaintiffs' Expert Designations
60 days after Plaintiffs' Expert Designations	Defendant's Expert Designations
60 days after Defendant's Expert Designations	Close of Expert Discovery
30 days after Close of Expert Discovery	Rule 702/Dispositive Motions for Representative Cases
14 days after moving brief	Oppositions to Rule 702/Dispositive Motions for Representative Cases
7 days after opposition	Replies in Support of Rule 702/Dispositive Motions for Representative Cases
To be scheduled by the Court	Hearing on Rule 702/Dispositive Motions for Representative Cases
To be determined the Court	Rulings on Rule 702/Dispositive Motions for Representative Cases

1
2 A coordinated proceeding of Onewheel personal injury cases was recently established in
3 California state court. The California state court proceedings involves many of the same plaintiffs'
4 counsel that are involved in the present federal proceeding. Future Motion proposes coordinating
5 discovery between the state court and federal court cases, as practical, to allow for the efficient conduct
6 of discovery.
7

8 Future Motion has not waived *Lexecon* and, therefore, has not agreed to “representative trials.”

9 **5. Status of Constituent Actions**

10 **a. Plaintiffs' Position:**

11 The procedural posture of each constituent action is (at least for some cases) significantly
12 variable. In the spirit of brevity, Plaintiffs submit a broad overview of cases that are similarly situated
13 by their progression on deadlines established in their previous scheduling orders. Generally, the
14 constituent actions can aptly fit into three categories: cases in which all discovery had previously
15 closed, cases in which some discovery had been completed, and cases in which little if any discovery
16 has been completed.
17

18 **Cases where discovery has previously closed.** Prior to centralization, discovery had
19 completely closed in six individual actions—*Bailey*, 3:22-cv-00855, *Haggerty*, 1:22-cv-00322, *Koop*,
20 3:22-cv-00134, *Nacca*, 6:22-cv-00472, *Roesler*, 2:22-cv-00144, and *Smith*, 8:22-cv-00320. *Daubert*
21 motions were filed in *Haggerty*, *Koop*, *Roesler*, and *Smith*, and motions for summary judgment were
22 filed in *Haggerty*, *Koop*, and *Roesler*. Notwithstanding the status of those individual cases, Plaintiffs
23 collectively believe that all cases should still benefit from common general and expert discovery. For
24 these cases, Plaintiffs reserve the right to rely upon previously conducted discovery, such as prior
25 written discovery responses, deposition testimony, and case-specific expert reports served.
26
27
28

Cases where some discovery has been completed. Prior to centralization discovery, the following 12 cases had completed some amount of discovery—*Brown*, 1:22-cv-04510, *Bunnell*, 1:22-cv-01220, *Downs*, 5:22-cv-01029, *Greer*, 3:22-cv-00810, *Gregie*, 1:22-cv-05528, *Gustafson*, 1:22-cv-02632, *Kinchen*, 4:22-cv-01970, *King*, 8:22-cv-03323, *McNair*, 3:22-cv-00329, *Oatridge*, 5:21-cv-09906, *Thomas*, 6:23-cv-01334, *Reedy*, 3:21-cv-17081, and *Young*, 2:22-cv-01701. In each of those 12 cases, written discovery was exchanged and responded to, subject to certain disputes over the responsiveness of the answers provided and/or documents produced. For example, discovery motions in at least some cases were being prepared and/or pending filing. Plaintiffs collectively believe the completion of general and expert discovery, as discussed in Section 4., *supra*, will permit the cases to be ready for *Daubert* and summary judgment motion practice, and then trial.

Cases where little discovery has been completed. The remaining 16 constituent actions have engaged in a little, if any discovery.

With respect to tag-along lawsuits, Plaintiffs are not currently aware of any tag-along lawsuits that were not the subject of the Court's December 18, 2023 Conditional Transfer Order (MDL Dkt. 9).

b. Defendant's Position:

There are 38 cases that have thus far been coordinated in this district. The cases and their status are summarized below:

	CASE CAPTION	STATUS
1.	Jason Bailey v. Future Motion, Inc.	Fact discovery closed
2.	James R. Barczy v. Future Motion, Inc.	Answered Complaint. No discovery.
3.	Matthew Boston v. Future Motion, Inc.	Answered Complaint. No discovery.

1	4.	Jason Brown v. Future Motion, Inc., et al.	Exchanged some written fact discovery. No depositions.
2			
3	5.	Ron Bunnell, et al. v. Future Motion, Inc., et al.	Exchanged some written fact discovery. No depositions.
4			
5	6.	Jonathan Wesley Burke v. Future Motion, Inc.	Answered Complaint. No discovery.
6			
7	7.	Christopher Delapaz v. Future Motion, Inc.	Exchanged some written fact discovery. No depositions.
8			
9	8.	Grant Downs v. Future Motion, Inc.	Exchanged some written fact discovery. No depositions.
10			
11	9.	Schulyer Elliott v. Future Motion, Inc.	Exchanged some written fact discovery. No depositions.
12			
13	10.	Christopher John Emmel v. Future Motion, Inc.	Answered Complaint. No discovery.
14			
15	11.	Kirston Gould v. Future Motion, Inc.	Answered Complaint. Served Initial Disclosures.
16			
17	12.	Brandon Greer v. Future Motion, Inc.	Exchanged some written fact discovery. No depositions.
18			
19	13.	Keith Gregie v. Future Motion, Inc., et al.	In fact discovery with some depositions completed.
20			
21	14.	James Gustafson v. Future Motion, Inc., et al.	Exchanged some written fact discovery. No depositions.
22			
23	15.	Michael Haggerty v. Future Motion, Inc., et al.	Fact discovery closed.
24			
25	16.	Brian Kinchen and wife, Lori Kinchen v. Future Motion, Inc.	In fact discovery with some depositions completed.
26			
27	17.	Samuel W. King v. Future Motion, Inc.	In fact discovery with some depositions completed.
28			

1	18.	Kwynn Koop v. Future Motion, Inc., et al.	Fact discovery closed.
2			
3	19.	James Loh, Sean Michael Smith, Giovany Rico, and Bradley Reber, individually, and on behalf of those similarly situated v. Future Motion, Inc.	Motions to dismiss and to strike pending.
4			
5	20.	Orlando Lopez-Roman v. Future Motion, Inc.	Answered Complaint. No discovery.
6			
7	21.	Matthew McAllister v. Future Motion, Inc.	Exchanged some written fact discovery. No depositions.
8			
9	22.	Victor McNair v. Future Motion, Inc.	In fact discovery with one deposition completed.
10			
11	23.	Caleb Metts v. Future Motion, Inc.	Answered Complaint. No discovery.
12			
13	24.	Ralph Nacca v. Future Motion, Inc.	Fact discovery closed.
14			
15	25.	Thomas Nemeth v. Future Motion	Complaint filed, but Future Motion has not been served. No discovery.
16			
17	26.	Thomas Nemeth v. Future Motion	Complaint filed, but Future Motion has not been served. No discovery.
18			
19	27.	Darryl Martin John Oatridge and Bridget Oatridge v. Future Motion, Inc., et al.	Exchanged some written fact discovery. No depositions.
20			
21	28.	Scott Patrick v. Future Motion, Inc., et al.	In fact discovery with one deposition completed.
22			
23	29.	Ian Quincannon v. Future Motion, Inc.	Exchanged some written fact discovery. No depositions.
24			
25	30.	Bryan Reedy v. Future Motion, Inc., et al	In fact discovery with some depositions completed.
26			
27			
28			

31.	Jonathan Reeves v. Future Motion, Inc.	Exchanged some written fact discovery. No depositions.
32.	Kevin Roesler v. Future Motion, Inc.	Fact discovery closed.
33.	Stephen Russo v. Future Motion, Inc., et al.	In fact discovery with one deposition completed
34.	John Scherschel v. Future Motion, Inc.	Answered Complaint. No discovery.
35.	Shane Smith v. Future Motion, Inc.	Fact discovery closed.
36.	Joel Thomas v. Future Motion, Inc.	In fact discovery with one deposition completed.
37.	Anh Truong v. Future Motion, Inc.	Answered Complaint. No discovery.
38.	Whitney Young and Mary Kokstis v. Future Motion, Inc.	In fact discovery with some depositions completed.

Future Motion is not aware of any tag-along lawsuits at this time. However, Future Motion was advised that an additional 30+ cases would be filed. Future Motion is also aware of several lawsuits in state courts that may be subject to removal.

6. Proposed Procession of Class Claims

Class counsel are unaware of any other class cases that have been added to this proceeding. However, on November 20, 2023, a class action case was filed by separate counsel in the Eastern District of Michigan in *Nemeth v. Future Motion Inc.*, 23-cv-12787 (E.D. Mich.).

As reflected in the proposed schedule above, class counsel suggest conducting discovery in coordination with the PIWD cases, but deferring dispositive motions and trial until after the first PIWD

1 bellwether trial. This approach will maximize efficiencies and provide all parties insight into the merits
2 of their claims and defenses.

3 **7. Preliminary Statement of Facts and Identification of Legal Issues**

4 **a. Plaintiffs' Preliminary Statement of Facts and Identification of Legal Issues:**

5 Defendant's Onewheel products are self-balancing, battery-powered, one-wheeled electric
6 transports that are often described as electric skateboards. The Onewheel product line is composed of
7 seven separate models, including the Onewheel, Onewheel+, Onewheel+ XR, Onewheel Pint,
8 Onewheel Pint X, Onewheel GT, and Onewheel GT S-Series. According to Onewheel's creator and
9 Defendant's Chief Executive Officer, Kyle Doerksen, each model is "totally different."

10 Notwithstanding the differences between Onewheel models, at least according to Defendant,
11 each Onewheel is equipped with a "warning system" (which is, ironically, the products' most
12 dangerous and unpredictable feature) referred to as "pushback." Pushback is allegedly designed to
13 warn riders to avoid a dangerous situation by purportedly causing the nose of the board to rise upwards.
14 Often however, instead of or in addition to such pushback, the Onewheel will simply shut off and
15 cause the board to unbalance and "nosedive" forward, resulting in the rider being ejected from the
16 device, frequently at high, unsafe speeds. Further, the company has described pushback as "subtle"
17 and difficult for at least new riders to detect—even though for most boards pushback constitutes the
18 *only* warning a rider will ever receive prior to a nosedive or other sudden, unexpected shutdown.
19

20 In November 2022, the Consumer Product Safety Commission (the "CPSC") issued a press
21 release warning Onewheel users that it "evaluated the Onewheel products and found that [Onewheels]
22 can cause the rider to be ejected from the product" (CPSC, *CPSC Warns Consumers to Stop*
23 *Using Onewheel Self-Balancing Electric Skateboards Due to Ejection Hazard; At Least Four Deaths*
24 *and Multiple Injuries Report*, (Nov. 16, 2022), [https://www.cpsc.gov/Newsroom/News-](https://www.cpsc.gov/Newsroom/News-Releases/2023/CPSC-Warns-Consumers-to-Stop-Using-Onewheel-Self-Balancing-Electric-)
25 [Releases/2023/CPSC-Warns-Consumers-to-Stop-Using-Onewheel-Self-Balancing-Electric-](https://www.cpsc.gov/Newsroom/News-Releases/2023/CPSC-Warns-Consumers-to-Stop-Using-Onewheel-Self-Balancing-Electric-)
26
27
28

1 [Skateboards-Due-to-Ejection-Hazard-At-Least-Four-Deaths-and-Multiple-Injuries-Reported.](#)) The
 2 CPSC, consistent with Plaintiffs’ allegations, identified the Onewheel’s propensity to “suddenly stop”
 3 as one of the attendant defects resulting in injuries and death. (*Id.*) Not until nearly a year later, in
 4 September 2023, did the CPSC and Defendant announce the recall of 300,000 Onewheel devices.
 5 (*CPSC, Future Motion Recalls Onewheel Self-Balancing Electric Skateboards Due to Crash Hazard;*
 6 *Four Deaths Reported*, (Sept. 29, 2023), [https://www.cpsc.gov/Recalls/2023/Future-Motion-Recalls-](https://www.cpsc.gov/Recalls/2023/Future-Motion-Recalls-Onewheel-Self-Balancing-Electric-Skateboards-Due-to-Crash-Hazard-Four-Deaths-Reported)
 7 [Onewheel-Self-Balancing-Electric-Skateboards-Due-to-Crash-Hazard-Four-Deaths-Reported.](#)) End
 8 users of the original Onewheel model and Onewheel+ model were offered a pro-rated refund upon
 9 disposal of the device. (*Id.*) End users of the Onewheel XR, Onewheel Pint, Onewheel Pint X, and
 10 Onewheel GT were advised to stop using their devices until they could remotely install a firmware
 11 update that equipped those models with a “tactile *and* audible warning system” called “Haptic Buzz
 12 [.]” (*Id.* (emphasis added).) The Haptic Buzz warning system purportedly provides a buzzing
 13 sensation and sound warning to users when (at least) some conditions known to cause a nosedive are
 14 imminent.
 15

16
 17 Against this backdrop and based upon counsels’ experience with Onewheel-related litigation,
 18 Plaintiffs believe the following legal issues are likely to arise:

- 19 i. The production of comprehensive Rule 26(a)(1) disclosures, including the
 20 production of complete insurance agreements that may satisfy all or part of a
 21 potential Plaintiffs’ judgment;
- 22 ii. The entry of an MDL-wide protective order and its appropriate scope;
- 23 iii. The appropriate progression of discovery;
- 24 iv. The discoverability and admissibility of other similar instances;
- 25 v. The discoverability of the source code for each Onewheel model that is the
 26 subject of a representative case, including the proper scope of source code
 27 inspection and terms of any related protocol;
- 28 vi. The proper scope and protocol for subject Onewheel board inspections and test
 rides;

- vii. The discoverability and admissibility of Defendant's communications with the CPSC, the CPSC's findings, and Defendant's recall.
- viii. Defendant's motion to dismiss *Loh*;
- ix. Motion for remand or other motion practice related to the inclusion or exclusion of *Loh*;
- x. Spoliation of the Onewheel Community Forum;
- xi. Motions for Summary Judgment;
- xii. Motions to exclude or strike expert testimony premised upon *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny.
- xiii. Waiver of venue. *See Lexecon Inc v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998).

b. Defendant's Preliminary Statement of Facts and Identification of Legal Issues:

Future Motion is the creator and manufacturer of the Onewheel, a one-wheeled electric skateboard. The Onewheel is generally comprised of a motor, battery, footpad sensor and wheel, and has electronic components which allow it to self-balance. The first board introduced in 2014 was the original Onewheel. Since then, Future Motion has introduced five other Onewheel models, distinguished primarily by size and battery range.

A rider of a Onewheel stands sideways on a board like a traditional skateboard. After the board is turned on, and a rider brings it to level, the motor will engage and start balancing the rider. To go forward, a rider leans forward, and to slow down or stop, a rider leans backwards. A board is turned by having the rider put pressure on his or her toes or heels to turn the board in the direction chosen. The board is entirely controlled by the rider. The rider decides how fast to ride, the terrain a board is ridden on, and all other aspects of the riding experience.

Like with other recreational products, there are risks associated with riding a Onewheel. Falls from Onewheels can and do happen for innumerable reasons including terrain variances, loss of balance, striking objects, rider distraction, rider inexperience and many others. In addition, because

1 of physics, there are limits to how fast a Onewheel can be ridden. In order to warn a rider to maintain
2 a safe and appropriate speed, Future Motion designed and developed its “pushback” safety feature. As
3 a rider starts to approach the board’s limits, the front of the board will lift up, or “pushback” to signal
4 to the rider to lean back and slow down. In fact, pushback actually physically moves the rider
5 backwards as a clear signal to the rider as to what to do. If the rider follows the pushback warning
6 and leans back to slow down, the board will stop pushing back. However, if the rider decides to lean
7 forward and push through pushback, the pushback warning will increase, and the rider will experience
8 an increasing amount of pushback. Thus, the pushback warning is progressive, the closer the rider gets
9 to the board’s limits, the greater the pushback warning that is provided.
10

11 The plaintiffs in these cases, other than the class actions, allege that they fell while riding a
12 Onewheel and allege that the board suddenly stopped or shut off. The plaintiffs assert the same core
13 set of causes of action against Future Motion, sounding in product liability—strict liability and
14 negligence claims of design defect, manufacturing defect, and failure to warn. There are a few
15 plaintiffs that have also asserted causes of actions for violation of a consumer protection statute,
16 violations of a business and professions code, and/or breach of warranty.
17

18 There is absolutely no evidence in any of the cases that any design, manufacturing, or warning
19 defect existed or that an issue with the board in any way contributed to or caused the incidents at issue.
20 Like with any recreational product, riders can fall from Onewheel boards on occasion. Further, given
21 its unique design, there is a learning curve for new riders to become proficient. Future Motion provides
22 extensive warnings and instructions on proper riding techniques in a variety of settings.
23

24 Future Motion anticipates the critical factual and legal issues:

- 25 i. Future Motion’s motion to dismiss and to strike the class allegations in *Loh*, and anticipated
26 motions to dismiss and to strike the class allegations in the *Nemeth* class action following
27 service of a Complaint;
28

- 1 ii. The entry of an MDL-wide protective order and its appropriate scope;
- 2 iii. The preservation, or spoliation, of the plaintiffs' board and any riding data contained on the
- 3 plaintiffs' mobile application or any other devices;
- 4 iv. Motions for Summary Judgment;
- 5 v. Motions to exclude or strike expert testimony premised upon Federal Rule of Civil Procedure
- 6 702.
- 7

8 Dated: January 11, 2024

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9
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